

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Craig Anderson	Team: Squad #7	CCRB Case #: 201500682	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/26/2015 6:42 AM	Location of Incident: In the vicinity of § 87(2)(b) in the Bronx, and the 46th Precinct stationhouse	Precinct: 46	18 Mo. SOL 7/26/2016	EO SOL 7/26/2016	
Date/Time CV Reported Mon, 01/26/2015 6:42 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 01/29/2015 8:04 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Louis Ortiz	12587	934341	046 PCT
2. POM Raheen Rivers	12601	937387	046 PCT
3. SGT Brian Shevitz	5114	946246	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ajish Joy	03562	941221	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Shevitz	Abuse: Sgt. Brian Shevitz supervised the entry of § 87(2)(b) the Bronx.	
B.POM Raheen Rivers	Force: In the vicinity of § 87(2)(b) in the Bronx, PO Raheen Rivers used physical force against § 87(2)(b)	
C.SGT Brian Shevitz	Force: In the vicinity of § 87(2)(b) in the Bronx, Sgt. Brian Shevitz used physical force against § 87(2)(b)	
D.POM Louis Ortiz	Force: In the vicinity of § 87(2)(b) in the Bronx, PO Louis Ortiz restricted § 87(2)(b)'s breathing.	
E.SGT Brian Shevitz	Force: In the vicinity of § 87(2)(b) in the Bronx, Sgt. Brian Shevitz struck § 87(2)(b) with an asp.	
F.POM Louis Ortiz	Discourtesy: In the vicinity of § 87(2)(b) in the Bronx, PO Louis Ortiz spoke discourteously to § 87(2)(b)	
G.POM Raheen Rivers	Abuse: In the vicinity of § 87(2)(b) in the Bronx, PO Raheen Rivers threatened to arrest § 87(2)(b)	
H.POM Raheen Rivers	Abuse: In the vicinity of § 87(2)(b) in the Bronx, PO Raheen Rivers threatened to notify Administration for Children's Services.	
I.POM Louis Ortiz	Force: At the 46th Precinct stationhouse, PO Louis Ortiz used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Louis Ortiz	Off. Language: At the 46th Precinct stationhouse, PO Louis Ortiz made remarks to § 87(2)(b) based upon ethnicity.	

Case Summary

On January 26, 2015 at 5:55 a.m., § 87(2)(b) called 911 because her ex-boyfriend § 87(2)(b), entered her apartment at § 87(2)(b) in the Bronx and punched her in the face (encl. 15A). After calling 911, she called her current boyfriend, § 87(2)(b) and asked him to come help her. § 87(2)(b) left the apartment before anyone else arrived. PO Louis Ortiz and PO Raheen Rivers of the 46th Precinct responded to § 87(2)(b)'s apartment. (Sgt. Brian Shevitz and PO Ajish Joy both said they arrived at the same time, but § 87(2)(b) and the other officers all said that they did not come until later.) While PO Ortiz and PO Rivers were speaking to § 87(2)(b) at her doorway, § 87(2)(b) arrived and entered the apartment. § 87(2)(b)'s neighbor, § 87(2)(b) then came to the apartment and took § 87(2)(b)'s child to her apartment. Although § 87(2)(b) told the officers that § 87(2)(b) was not the man who hit her, she alleged that the officers did not believe this. The officers called Sgt. Shevitz – who had been canvassing for suspects – to the scene, and he ordered them to enter the apartment and arrest § 87(2)(b) (**Allegation A**). § 87(2)(b) stood in the doorway and attempted to block the officers' entry. PO Rivers allegedly grabbed her by the shoulders and pulled her into the hallway, causing her to hit the wall and floor (**Allegation B**). Officers entered the apartment to arrest § 87(2)(b) and Sgt. Shevitz allegedly picked § 87(2)(b) up and body-slammed him to the floor (**Allegation C**). During the struggle to handcuff § 87(2)(b) PO Ortiz allegedly put his knee on the right side of § 87(2)(b)'s neck in a way that prevented him from breathing (**Allegation D**). Sgt. Shevitz allegedly struck § 87(2)(b) two times in the left knee with an asp (**Allegation E**). While the officers escorted § 87(2)(b) outside, he complained about pain to his arm. PO Ortiz allegedly said, "I don't give a fuck about your arm" (**Allegation F**). § 87(2)(b) followed § 87(2)(b) and the officers outside. She was crying and, according to several officers, attempted to interfere with § 87(2)(b)'s arrest. PO Rivers allegedly told her to "go upstairs before we take you and your kid" (**Allegations G and H**). § 87(2)(b) who did not know § 87(2)(b) or § 87(2)(b) observed some of this from the sidewalk across the street and called 911 (encl. 12B). At the 46th Precinct stationhouse, PO Ortiz and PO Rivers walked § 87(2)(b) to a holding cell. PO Ortiz allegedly put § 87(2)(b) in the cell by picking him up by his shoulder and throwing him back-first into the cell, so he landed on his handcuffed wrists (**Allegation I**). PO Ortiz allegedly called him a "spic" (**Allegation J**). While in police custody, § 87(2)(b) was treated at § 87(2)(b) and diagnosed with soft tissue swelling (see medical records folder for the medical documents and encl. 14A for a summary).

Mediation, Civil, and Criminal Histories

This case was ineligible for mediation due to § 87(2)(b)'s injuries. As of May 19, 2015, neither § 87(2)(b) nor § 87(2)(b) have filed a notice of claim related to this incident with the Comptroller's office (encl. 59G). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 9A, 10A, and 11A).
- PO Ortiz has been a member of the NYPD for ten years and there is one prior CCRB complaint against him, which was truncated (encl. 6A).
- PO Rivers has been a member of the NYPD for ten years and there is one prior CCRB complaint against him, which was unsubstantiated (encl. 7A).
- Sgt. Shevitz has been a member of the NYPD for seven years and there are two prior CCRB complaints against him. In one of those complaints, allegations of excessive force and a threat of arrest were substantiated and the board recommended charges. Sgt. Shevitz pled guilty and was penalized by a forfeiture of 20 vacation days (encl. 8A).
 - In the substantiated case, 200902024, the complainant attempted to record video of an arrest. The investigation determined that Sgt. Shevitz forcibly grabbed and pulled the complainant and unlawfully threatened to arrest him.
- § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

Force: § 87(2)(b) alleged that an officer kicked § 87(2)(b) while putting him in the car (encl. 29B-C). § 87(2)(b) however, did not allege this § 87(2)(g)

Potential Issues

§ 87(2)(b) was a woman who called 911 after watching the officers put § 87(2)(b) in their police car, which she observed from the sidewalk across the street; she did not know § 87(2)(b) or § 87(2)(b) is § 87(2)(b)'s neighbor, and came to take § 87(2)(b)'s child when she heard a commotion in her apartment. § 87(2)(b) and § 87(2)(b) both saw only a small part of the incident, and did not remember the incident in significant detail. § 87(2)(g)

Explanation of Subject Officer Identification

The officers unanimously stated that, as the highest-ranking officer on scene, Sgt. Shevitz gave the order to enter § 87(2)(b)'s apartment and arrest § 87(2)(b) § 87(2)(g)

§ 87(2)(b) did not know the name of the officer who allegedly grabbed her and pulled her into the hall, but said he was a black man who arrived at the same time as PO Ortiz. PO Rivers was the only black officer involved in this incident. He was PO Ortiz's partner and they both said they arrived at the scene together. § 87(2)(g)

§ 87(2)(b) did not know the name of the officer who threw him to the ground and struck him with an asp, but described him as a white man. § 87(2)(g)

§ 87(2)(b) knew PO Ortiz by name and said that he put his knee on his neck, cursed at him, called him a “spic,” and threw him into the holding cell. § 87(2)(g)

§ 87(2)(g)

Recommendations

Allegation A – Sgt. Brian Shevitz supervised the entry of § 87(2)(b) in the Bronx.

It is undisputed that Sgt. Shevitz ordered the officers under his command to enter § 87(2)(b)'s apartment without her consent, for the purpose of arresting § 87(2)(b) for allegedly assaulting § 87(2)(b). § 87(2)(b) and all four officers stated that § 87(2)(b) entered the apartment after PO Ortiz and PO Rivers arrived (encl. 29A-C). Sgt. Shevitz acknowledged that § 87(2)(b) told him § 87(2)(b) was not the man who hit her (encl. 43C-D). He said he did not believe this because § 87(2)(b) fit the description she previously gave, and because he thought § 87(2)(b) might be afraid of § 87(2)(b). PO Rivers also said he understood § 87(2)(b)'s behavior as an attempt to “intimidate” § 87(2)(b) (encl. 39C-D). § 87(2)(b) was admittedly intoxicated and belligerent toward the officers before they entered the apartment, and told them to “get the fuck out,” among other things (encl. 16A, 21B-C).

All four officers said that § 87(2)(b) matched the description provided by § 87(2)(b) but only PO Ortiz could recall this description in any significant detail. In his CCRB interview, PO Ortiz said the description was for a Hispanic man with braids, a goatee, and a green jacket (encl. 34C-D).

The 911 radio recording — § 87(2)(g) — described § 87(2)(b)'s attacker as a tall Hispanic man with braids wearing a green coat, black pants, and green sneakers (encl. 48A).

A warrantless entry into a private residence is presumptively unreasonable unless the circumstances generate an exception to the warrant clause. The hot pursuit exception requires that the officer initiate the arrest in a public place, after which the officer may enter a private

residence that the defendant flees into to evade arrest. People v. Hunter, 92 A.D. 3d 1277 (4th Dept. 2012) (encl. 0A-C). Similarly, exigent circumstances may create an exception to the warrant requirement if there is an “urgent need” to enter the location. Six tenets are used to measure the amount of exigency involved: (1) the gravity or nature of the suspected offense, (2) whether the suspect is believed to be armed, (3) probable cause that the suspect committed the crime, (4) a strong reason to believe that the suspect is inside the premises being entered, (5) the likelihood of escape, and (6) the peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010) (encl. 1A-G). In order to justify a warrantless entry under the emergency doctrine, the police must reasonably believe an emergency is at hand that necessitates their immediate intervention to protect life or property. The intent of the entry or search cannot be to make an arrest or collect evidence, and an element of probable cause linking the location to the emergency must exist. People v. Greenleaf, 222 A.D.2d 838 (3rd Dept. 1995) (encl. 1.5A-B). “Probable cause exists if the facts and circumstances known to the arresting officer warrant a prudent man in believing that the offense has been committed.” People v. Oden, 368 N.Y.S.2d 508 (1975) (encl. 1.6 A-C).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation B – In the vicinity of § 87(2)(b) in the Bronx, PO Raheen Rivers used physical force against § 87(2)(b)

When the officers attempted to enter the apartment, § 87(2)(b) stood in her doorway in an attempt to block them. She alleged that after PO Ortiz, PO Joy, and Sgt. Shevitz moved past her into the apartment, PO Rivers grabbed her by the shoulders and forcefully pulled her into the hallway. This caused her to hit her elbow against a wall and fall to the floor (encl. 29A-C).

The officers gave conflicting accounts of how § 87(2)(b) was removed from the doorway. PO Rivers said a different officer moved § 87(2)(b) out of the doorway, and he was unsure if she fell on the floor. He said all four officers immediately entered the apartment and approached § 87(2)(b) (encl. 39C-D).

PO Ortiz said the four officers collectively “pushed” § 87(2)(b) out of the way. He did not see if she fell on the floor, because he and PO Joy pursued § 87(2)(b) while Sgt. Shevitz and PO Rivers remained by the doorway to deal with § 87(2)(b) (encl. 34C-D).

PO Joy said § 87(2)(b) was interacting with Sgt. Shevitz and, during this, he and PO Ortiz slipped past her into the apartment. He denied that any officer forcibly pushed or pulled her onto the floor, and did not remember her falling to the floor (encl. 46C-D).

Sgt. Shevitz said he grabbed § 87(2)(b)'s arm and pulled her into the hallway, after which he, PO Ortiz, and PO Joy entered the apartment to arrest § 87(2)(b). PO Rivers stayed in the hallway with § 87(2)(b) and Sgt. Shevitz did not think she ever fell on the floor (encl. 43C-D).

§ 87(2)(g)

Allegation C – In the vicinity of § 87(2)(b) in the Bronx, Sgt. Brian Shevitz used physical force against § 87(2)(b)

Allegation D – In the vicinity of § 87(2)(b) in the Bronx, PO Louis Ortiz restricted § 87(2)(b)'s breathing.

Allegation E – In the vicinity of § 87(2)(b) in the Bronx, Sgt. Brian Shevitz struck § 87(2)(b) with an asp.

§ 87(2)(b) alleged that Sgt. Shevitz picked him up and threw him onto the floor, in professional wrestling-style move. While § 87(2)(b) was face-down on the floor, PO Ortiz allegedly put his knee on the right side of § 87(2)(b)'s neck for about two minutes. He could “barely” breathe because of this, and felt like he was “turning blue.” He stated that he attempted to tell PO Ortiz that he could not breathe. Sgt. Shevitz also allegedly hit him two times in the left knee with an asp. § 87(2)(b) provided photographs depicting redness and scrapes on his left knee (encl. 24A-B, 24E). His records from § 87(2)(b) state that he complained of pain to his left leg, which he attributed to “police stopping on it” (sic). § 87(2)(b) said that, due to her position in the hallway, she could not see the struggle described above (encl. 29A-C).

PO Ortiz and PO Joy both said that only they – and not Sgt. Shevitz or PO Rivers – were involved in the struggle to handcuff § 87(2)(b). PO Joy said they took § 87(2)(b) to the floor by “using § 87(2)(b)'s momentum against him” (encl. 46C-D). PO Ortiz said they used an arm bar to take him to the floor (encl. 34C-D). Sgt. Shevitz said that PO Ortiz and PO Joy put him on the floor, but that he handcuffed § 87(2)(b) himself (encl. 43C-D). PO Rivers said that all four officers put § 87(2)(b) on the ground, and that PO Joy put handcuffs on him (encl. 39C-D).

The officers all consistently stated that § 87(2)(b) was handcuffed fairly quickly. All four officers denied that any officer drew his asp or hit § 87(2)(b) with it. They all also denied that PO Ortiz put his knee on § 87(2)(b)'s neck, and all denied hearing § 87(2)(b) complain of difficulty breathing.

§ 87(2)(g)
[REDACTED]

Allegation F – In the vicinity of § 87(2)(b) Street in the Bronx, PO Louis Ortiz spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that, when he complained of difficulty breathing, PO Ortiz told him to “shut the fuck up.” When he later complained of pain to his arm, PO Ortiz allegedly said, “I don’t give a fuck about your arm” (encl. 21A-C). § 87(2)(b) did not mention either of these statements, but she was not inside the apartment when they handcuffed § 87(2)(b) and indicated that she was crying and talking when the officers walked him outside, so it is unlikely that she would have heard these remarks (encl. 29A-C).

All four officers denied that § 87(2)(b) complained of trouble breathing or of pain to his arm. PO Ortiz denied using any obscenities toward § 87(2)(b) and the other three officers denied hearing him use obscenities.

§ 87(2)(g)

Allegation G – In the vicinity of § 87(2)(g) in the Bronx, PO Raheen Rivers threatened to arrest § 87(2)(b)

After the officers arrested § 87(2)(b) § 87(2)(b) followed them outside while crying and asking them not to arrest him. PO Rivers allegedly said, “Go upstairs before we take you and your kid.” § 87(2)(b) then threw herself on the ground and asked PO Rivers not to arrest her, after which he allowed her to go upstairs.

As detailed in the officer identification section, there was conflicting testimony from officers and witnesses about which officer, if any, threatened to arrest § 87(2)(b)

The officers and witnesses gave varying accounts of § 87(2)(b)'s behavior while § 87(2)(b) was being put in the car. PO Ortiz said § 87(2)(b) moved as though she was “about to” physically prevent them from putting § 87(2)(b) into the car, but she did not actually grab § 87(2)(b) or otherwise physically interfere. PO Ortiz said that based on her actions, she could have been arrested for obstruction of governmental administration (encl. 34C-D). PO Rivers generally corroborated this, saying that she attempted to grab § 87(2)(b) but did not succeed. He also said she could have been arrested for obstruction of governmental administration, but added that, “We did all we could not to put her under arrest” (encl. 39C-D).

Sgt. Shevitz said § 87(2)(b) was “screaming” when she was outside, and that she was told numerous times to go inside the building. He said that she was “interfering with an arrest,” but said they did not want to arrest her because she was the victim of a crime (encl. 43C-D). PO Joy said that § 87(2)(b) was crying, but never attempted to grab § 87(2)(b) or otherwise physically interfere (encl. 46C-D). § 87(2)(b) said that § 87(2)(b) asked the officers not to take § 87(2)(b) but never attempted to touch § 87(2)(b) or the officers (encl. 19A).

A person is guilty of obstruction of governmental administration when he or she “intentionally obstructs, impairs or perverts the administration of law” or “attempts to prevent a public servant from performing an official function,” including by means of physical interference. N.Y.S. Penal Law, Section 195.05 (encl. 2A).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – In the vicinity of § 87(2)(b) in the Bronx, PO Raheen Rivers threatened to notify Administration for Children's Services.

PO Rivers acknowledged that he told § 87(2)(b) that, if she was arrested, he would call ACS about her son. In the interview, he said his reason for this was that the child would be left unattended if § 87(2)(b) was arrested. There were no other factors that contributed to his threat to call ACS (encl. 39C-D).

§ 87(2)(b) said she took § 87(2)(b)'s son to her apartment while the officers were present, but before § 87(2)(b) was arrested (encl. 18A). PO Rivers also said that a neighbor took § 87(2)(b)'s child. § 87(2)(b) cared for the child in her apartment, and briefly went outside to encourage § 87(2)(b) to come back inside.

Officers may not threaten to call ACS in an attempt to gain compliance; they may only threaten to call ACS if they have a legitimate reason to do so. NYPD v. Rodriguez, OATH Index #78166/02 (encl. 3A-U).

§ 87(2)(g)

Allegation I – At the 46th Precinct stationhouse, PO Louis Ortiz used physical force against

§ 87(2)(b)

§ 87(2)(b) alleged that PO Ortiz put him into the holding cell by throwing him back-first onto the floor, causing him to land on his handcuffed wrists. He had visible handcuff marks on his wrists at the time of his CCRB interview nearly two weeks later (encl. 23B-D). PO Ortiz denied throwing § 87(2)(b) onto the floor, or seeing him on the floor of the cell for any reason (encl. 34C-D). PO Rivers said § 87(2)(b) was angrily ranting when they walked him to the cell, but denied any physical incident (39C-D). Sgt. Shevitz and PO Joy did not accompany PO Ortiz and PO Rivers to the holding cell (encl. 43C-D, 46C-D).

The prisoner holding pen roster shows that no other prisoners were in the holding cells at the same time as § 87(2)(b) and it lists PO Ortiz as the officer guarding § 87(2)(b) (encl. 55A).

§ 87(2)(g)

Allegation J – At the 46th Precinct stationhouse, PO Louis Ortiz made remarks to § 87(2)(b) based upon ethnicity.

§ 87(2)(b) alleged that, as PO Ortiz threw him into the cell, PO Ortiz called him a “spic” (encl. 21A-C). PO Ortiz denied saying this, and PO Rivers denied hearing PO Ortiz make this remark, or any remarks about § 87(2)(b) s ethnicity (encl. 34C-D, 39C-D). As discussed in the **Allegation I** analysis, no one else witnessed § 87(2)(b) being put in the cell.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Pod: 7

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date